

In The Matter Of:

*Judicial Watch, Inc., and True The Vote -v-
J. Bradley King, Trent Deckard and Connie Lawson*

*Francisco Fotia
May 28, 2013*

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF INDIANA (INDIANAPOLIS)

3 JUDICIAL WATCH, INC., and)
4 TRUE THE VOTE,)
5 Plaintiffs,)

6 -vs-)

7 J. BRADLEY KING, TRENT)
8 DECKARD, and CONNIE LAWSON,)
9 Defendants.)
10 -----)

Case No.
1:12-cv-00800-WTL-TAB

11 The Deposition of FRANCISCO CHRISTOPHER FOTIA

12 Date: Tuesday, May 28, 2013

13 Time: 9:02 a.m.

14 Place: Thorne Grodnik, LLP
15 420 Lincolnway West
16 Mishawaka, Indiana

17 Called as a witness by the Plaintiffs in
18 accordance with the Rules of the United
19 States District Court, Southern District of
20 Indiana, Indianapolis Division, pursuant to
21 Notice.

22 Before Sharon L. Brady, Court Reporter
23 and Notary Public

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23 On behalf of the Deponent.

24 * * *

I N D E X

THE DEPOSITION OF
FRANCISCO CHRISTOPHER FOTIA

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* * *

1 MR. FEDELI: Okay. The case name
2 is Judicial Watch and True The Vote
3 versus J. Bradley King, Trent Deckard,
4 and Connie Lawson in their official
5 capacities, U.S. District Court,
6 Southern District of Indiana. My
7 name's Chris Fedeli, here representing
8 Plaintiffs.

9 Would you like to introduce
10 yourselves, Counsel?

11 MR. GARN: Jefferson Garn from
12 the Office of the Attorney General on
13 behalf of the Defendants.

14 MR. WOODS: Jamie C. Woods and
15 Dan Herbster on behalf of the
16 deponent.

17 MR. FEDELI: Counsel, before we
18 start, would you guys like to agree to
19 the usual stipulations for today's
20 deposition?

21 MR. WOODS: We will -- we'll deal
22 with any issues regarding objections
23 as they arise. So, we'll not agree to
24 that at this point in time.

25 MR. FEDELI: Okay. Will you

1 their new address just like any other voter?

2 A They can't be singled out because they're college
3 students.

4 Q Just like any other voter, you will take them off
5 your list either in response to a mailing or an
6 affirmation or postcard or in response to an SVRS
7 hopper item, correct?

8 A Correct.

9 Q What's the --

10 A I mean, they don't check a box on their
11 application that says, "Hey, I'm a college
12 student." So, really, we wouldn't know that they
13 were other than knowing that they reside in a
14 dorm if they did that.

15 Q What's the VRG-14 Authorization to Cancel
16 Registration form?

17 A It's a form authorizing us to cancel a
18 registration.

19 Q And you can send it to any voter that appears on
20 your rolls that you have reason to believe no
21 longer lives there?

22 A Yes.

23 Q Do you use those?

24 A We do.

25 Q And about how many do you send out a year?

1 A I personally don't send out any. There are
2 people in our office that do, one of the
3 employees at one time, when we got change of
4 address -- or change of voting location postcards
5 that came back. So, if your particular precinct
6 had a change in their polling location, we'd
7 notify you through a postcard.

8 And if it came back and said you now --
9 "Here's an address in Florida, here's an address
10 in Michigan," if it had the forwarding address on
11 there, then she mailed them an Authorization to
12 Cancel form.

13 Q Do the local four-year colleges give you any
14 address information or graduation information
15 concerning students registered on your voter
16 rolls?

17 A No.

18 Q Have you ever asked for any assistance from them?

19 A No.

20 Q Would assistance from them be helpful to you for
21 maintaining accurate voter rolls?

22 A Is that legal? That doesn't violate any
23 confidentiality the university has with the
24 students?

25 Q Do you believe it would be helpful or don't you?

1 A I don't believe we can get address information
2 from a third party and have that in any way
3 affect our voter rolls.

4 Q You could use it to do mailings, couldn't you?

5 A I suppose we could use it to do mailings if that
6 was allowable within the law. I don't know that
7 being told by an entity other than the post
8 office that somebody lives somewhere else we can
9 take that.

10 Q Now, prior to assuming your current position, how
11 much interaction did you have with the state
12 Election Division or Secretary of State's Office?

13 A When I worked for the county party, I called Brad
14 King several times on party-related issues, such
15 as holding caucuses to appoint a vacancy in
16 several elected offices.

17 Q So, that was party business. You mentioned that
18 you've been with the county election office since
19 2011, correct?

20 A Yes.

21 Q And what were your interactions with the state in
22 your capacity with the county elections office?

23 A I call Brad King frequently to get clarification
24 on several things.

25 Q And would one of those things be list

1 maintenance?

2 A Yes.

3 Q And have you had conversations with Brad about
4 list maintenance over the past couple years?

5 A Yes.

6 Q What were the nature of those conversations?

7 A Our predecessors, Terry's predecessor and my
8 predecessor, would use change of address or, I'm
9 sorry, change of polling location postcards.
10 When they came back, they would use those to mark
11 voters inactive.

12 And I spoke to Brad King and was told that
13 because it wasn't a countywide mailing we could
14 not use those to do that anymore. So, we stopped
15 that. But I also talked to him about possibly
16 using BMV records that say "moved out of the
17 state." So, if we look up somebody and their BMV
18 record says that they've moved out of the state,
19 he told me I could send them NCOA letters as
20 well. And I have done a few of those.

21 And we also talked about the possibility of
22 using jury pool questionnaires as a -- people who
23 have those letters come back, to get that
24 information. And I've tried to get that
25 information from the clerk's office; though the

1 jury clerk, I don't think, fully understood
2 because she sent me a list of everybody whose
3 questionnaire came back not served.

4 But we didn't have the reason why it wasn't
5 served, so I couldn't act on that. Because if it
6 came back because they were temporarily away, I
7 can't -- that's not a trigger. But if it came
8 back saying the person doesn't live there
9 anymore, then -- and they sent it to an invalid
10 address, that's different and I could've sent
11 them an NCOA letter. But I didn't get full
12 information from the clerk's office on that.

13 Q Did you and Brad King ever talk about the
14 condition of the St. Joseph County voter rolls?

15 A I'm sure we did in passing. I try not to
16 speculate. Usually our conversations are
17 concerned with how the state interprets
18 particular statutes and what we're supposed to
19 do.

20 Q Do you ever talk to anybody else in the Election
21 Division other than Brad King?

22 A I've spoken to Leslie Barnes, I know, on the
23 phone; Trent Deckard at the IVRA conference. I
24 don't remember if I've ever spoken with Trent on
25 the phone.

1 Q So, it would be safe to say you talk to the --

2 A Dale, yeah.

3 Q -- Republican staff more than the Democrat staff
4 on the phone?

5 A Our office talks to the Republican staff more
6 than the Democrat staff. Usually we just talk to
7 Brad King.

8 Q Do you ever get conflicting advice from Brad King
9 and Trent Deckard?

10 A Sometimes I get conflicting advice from Brad King
11 because he's very good at telling me when Trent
12 disagrees with him and will say, "Well, I say
13 this. Trent says this. We've left that up to
14 the county Election Division -- or County
15 Election board to decide. So, just want to let
16 you know we're not in agreement on a particular
17 issue."

18 And, in fact, the publications they put out
19 will say, you know, "This is Brad's answer. This
20 is Trent's answer."

21 Q And what do you and Terry Coleman do in those
22 cases?

23 A We bring it to the Election Board and ask them to
24 make a decision.

25 Q Who's on the Election Board other than you and

1 Terry Coleman?

2 A We're not on the Election Board.

3 Q Who is on the Election Board?

4 A It's -- Murray Winn is the Republican appointee.
5 Jim Korpall is the Democrat appointee. And the
6 county clerk serves as secretary and ex-officio
7 member of the board.

8 Q That would be Terri Rethlake?

9 A Terri Rethlake.

10 Q So, this three-person board makes decisions in
11 cases where you and Terry Coleman can't make a
12 decision for whatever reason on some particular
13 part of your responsibility; is that right?

14 A Well, they have the authority to make decisions
15 more than we do. We -- we make up the board of
16 voter registration. And we make decisions based
17 on particular voter registration issues, such as,
18 you know, is this an appropriate form, things
19 like that.

20 But if we're talking procedure and it's not
21 prescribed within statute, then the Election
22 Board directs us. We don't have that decision
23 making ability --

24 Q How often does the --

25 A -- or authority.

1 Q I'm sorry. Please continue.

2 A No. I'm fine.

3 Q How often does the Election Board make decisions
4 on list maintenance activities for you and
5 Mr. Coleman?

6 A I don't know that they have because that's, to my
7 knowledge, not something that the Indiana
8 Election Division has been unclear on.

9 Q You mentioned they provide conflicting advice
10 from time to time?

11 A From time to time. But I don't believe they -- I
12 don't know them to provide conflicting advice on
13 voter list maintenance other than what to do in
14 the case of an NCOA letter coming back as being
15 undeliverable for a voter that was registered at
16 a previous address.

17 Trent Deckard, I believe, thinks that we
18 should activate them at their old address. I
19 think Brad's changed his mind. He used to say
20 that he thinks that we should just cancel them
21 because we know they don't live now at either
22 address.

23 But we've issued some certificates of error
24 on election day in the past, so I think it's just
25 best that we revert them back to the old address.

1 saying, you know, "I registered. Here it is."

2 So, the Election Board voted to go ahead and let
3 his vote count.

4 Q So, there was two provisional ballots; one
5 because of a list maintenance glitch and one
6 because of an SVRS glitch. And both voters got
7 provisional ballots, and both counted?

8 A Yes.

9 Q Has anybody ever been disenfranchised from an
10 accident on your part?

11 A I wouldn't know.

12 Q A list maintenance error on the county's part?

13 MR. GARN: Objection. Calls for
14 speculation.

15 BY MR. FEDELI:

16 Q You can say you don't know if you don't know.

17 A I would have no way of knowing.

18 Q So, to recap a little bit, you mentioned earlier
19 that you need to get hopper items from -- the
20 Department of Corrections, the Department of
21 Health, the Bureau of Motor Vehicles, and the
22 Election Division all send items to your hopper
23 concerning people who have moved, people who have
24 died, people who have been convicted of a crime
25 that you will need to process to maintain your

1 voter rolls; is that right?

2 A Been convicted of a crime and incarcerated.

3 Conviction alone isn't grounds for removal.

4 Q But did I get all the offices right that need to
5 communicate with your county?

6 A The jail also communicates. Not through a
7 hopper. They send an actual report. The
8 Secretary of State's Office sends paper reports
9 as well.

10 We get from -- other states will send to the
11 Indiana Election Division notices that people
12 have registered in New York, New Jersey,
13 Nebraska, Oregon sometimes, Florida. And we can
14 cancel them then.

15 Q And those notices will come directly from the
16 other states?

17 A They'll come to the Indiana Election Division.
18 And then the Indiana Election Division will send
19 us an envelope every so often with -- maybe
20 weekly with everything they had gotten in the
21 last week.

22 Q And the Secretary of State, the reports that they
23 send consist of what exactly?

24 A People who have -- what do we get from them?
25 I'll get a report for people who have been

1 incarcerated in other counties as well.

2 Q How about federal incarcerations? Do they tell
3 you about that, too?

4 A Last week, I actually got the federal order
5 remanding somebody to a federal prison.

6 Q Who sent you that?

7 A I don't know. I didn't get the envelope. I was
8 just -- somebody else in the office had opened
9 whatever envelope it came in, and I just got the
10 document. So, I don't know where it came from.

11 Q So, then, in addition to the hopper items that we
12 already mentioned, the jail, the Secretary of
13 State, the Election Division, will all send you
14 paper items for processing as well?

15 A Uh-huh.

16 Q And then in addition to all of these state
17 entities or county entities, you'll also get
18 hopper items from 91 other counties concerning
19 moves, transfers, for you guys to maintain your
20 voter rolls accurately; is that right?

21 A Yes. And the FSSA offices get voter registration
22 applications and turn those in as well.

23 Q So, it's 91 counties and about six state offices
24 that I've counted, does that sound right, that
25 send you voter roll registration maintenance

1 updates?

2 A Sure.

3 Q So, your ability to keep the voter rolls clean is
4 largely a function of how well -- how good the
5 input of information you're getting from these
6 other offices, correct?

7 A It's a function of how often the voters notify
8 the agencies when they move.

9 Q And then a function of how well the agencies and
10 the counties notify you?

11 A I suppose.

12 Q So, in your two -- you've been there, in the
13 election office, since 2011.

14 In that time, have you ever seen or have you
15 ever been aware of the state sending St. Joseph
16 County a notice letter concerning the number of
17 voter registration removals the county's made?

18 A No.

19 Q Has the state ever sent a notice letter
20 concerning the number of voter registration
21 address transfers the county had made in a given
22 month?

23 A No.

24 Q Has the state ever sent a notice letter informing
25 the county that the number of registered voters

1 because you'd take names off more accurately; is
2 that correct?

3 A That -- I suppose. But, like I said, that --
4 we're talking maybe 15 a month, if that. That
5 doesn't happen very often. I think most of the
6 time people in our area do a fairly good job
7 registering -- linking up the cards to the right
8 person even if they're not in the right county.

9 Q You have people? Is that what you said? Your
10 people?

11 A Well, I think voter registration offices in the
12 area, like in surrounding counties as well.
13 Occasionally, we'll find somebody registered in
14 two counties. But it doesn't happen very often.

15 Q Are you in contact with the surrounding counties,
16 with their offices?

17 A Marginally. Most of the time we don't have to
18 call them because we don't find mistakes like
19 that.

20 Q Are you careful about canceling --

21 A Yes.

22 Q -- voter registrations? Why is that?

23 A We appreciate how much of a hassle it is when
24 somebody shows up and they're not on the rolls.
25 It's very frustrating for the voter and me, and

1 we wouldn't ever want to disenfranchise somebody
2 who is entitled to vote.

3 And I understand that there are failsafes in
4 place, but I also understand that people don't
5 think necessarily that provisionals ever get
6 counted. There's a lot of misinformation. They
7 think that a provisional's only counted if it's
8 close and the provisional is needed to sway an
9 election one way or the other, which is not true.
10 But I've been told that on numerous occasions.

11 We also want the records to be as accurate
12 as possible. And removing somebody in error is
13 just as bad as registering somebody in the wrong
14 place. We want them to be accurate. So, I think
15 we take great pains in both registering and
16 removing.

17 Q So, you see your obligations to register and to
18 the maintaining -- you see those as -- are you
19 doing a balancing act kind of between those two
20 obligations?

21 A I think we have an obligation to maintain our
22 records as accurately as possible within the
23 constructs of the law. And whether we're adding
24 new voters or removing voters, we try to do that
25 as accurately as possible.

1 Q Do you think there are a lot of constrictions to
2 removing people off the rolls?

3 A Personally?

4 Q Uh-huh. Yes.

5 A I do. I think a lot of times it runs contrary to
6 common sense. But I understand that, I mean, the
7 law is what it is and we can't just do what we
8 want to do because we think it's better. We have
9 to follow the rules.

10 Q So, for keeping your rolls as accurate as
11 reasonably possible, you do have to rely on other
12 counties to --

13 A We do.

14 Q Do you have to rely on the SVRS system?

15 A Yes. We all work with -- it's a statewide
16 system. We all have access to every registered
17 voter in the state.

18 Q Do you also rely on the residents in St. Joe
19 County and residents of Indiana in general to let
20 you know that they move?

21 A Oh, ultimately it's the voter's responsibility to
22 notify us when they change residences or change
23 counties.

24 Q You mentioned that you canceled approximately
25 5,600 voters in January. How did that come

1 about?

2 How did they get on the inactive list? How
3 did they eventually get to the point where they
4 could be removed from the list?

5 A They would've gotten on there due to NCOA letters
6 coming back.

7 Q Why were those sent out in the first place?

8 A When a voter registers to vote, every registered
9 voter -- every application triggers an
10 acknowledgement notice or a notice of
11 dispensation based on whether or not we approved
12 or rejected it.

13 And if it's approved, we send you a letter
14 to the address on your application whether it's
15 your residence address or -- if you provided a
16 mailings address, we'll use the mailing address.

17 If that letter comes back and you're still
18 on pending status, which will be about
19 seven days, then you just get canceled.

20 If it comes back because it's forwarded to
21 some other address, such as the post office says
22 you don't live there anymore, you live somewhere
23 else, or if it's a vacant house, we know nobody's
24 living there.

25 If it comes back because it's temporarily